



STATE BOARD OF EQUALIZATION

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 Executive Director

March 4, 2009

VIA INTERNET

Dear Interested Party:

The Sales and Use Tax Department is proposing to revise Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous*. The text of the revisions to Chapter 9, provided in the following pages, includes the proposed changes summarized below. Contact information is provided on page 2 of this letter.

<u>CPPM Section</u>	<u>Summary of Revisions</u>
901.010 - 901.060	Updated section name changes and made minor grammatical changes.
905.030	Last paragraph deleted to conform to revised SUT Regulation 1807(a).
905.041	Added procedures for “substantially affected jurisdictions”.
905.050	Incorporated Regulation 1807(b) in new section, “Review by Allocation Group.”
905.052	“Review by Allocation Group Supervisor” has been deleted as those procedures have been incorporated into section 905.050.
905.053 905.054 905.055	“Review by the Refund Section Supervisor”, “Review by the Local Tax Appeals Auditor”, and “Review by Board Management” have been deleted as the described review processes have been eliminated.
905.057	“Petition for Hearing” section deleted; information included in 905.060.
905.058	“Persons to Be Notified of the Board Hearing” section deleted; information included in 905.010 and 905.075.
905.060	Incorporated Regulation 1705(c). Replaced “Time Limitations” section with new section, “Review by Appeals Section.” Deadlines are discussed in new sections 905.050, 905.060, and 905.070.
905.070	Replaced “Appeal Rights of Jurisdictions that Will Lose Revenue as the Result of a Reallocation” with new section, “Review by Board Members.” New appeal procedures explained in new sections 905.050, 905.060, and 905.070.

905.090 Revised procedures for processing inquiries under RTC section 6006.3 to conform to Regulation 1807(f) requirements. Also deleted the last paragraph containing the transition rule information. It is unnecessary to include this information in the CPPM as it will not apply to new cases.

If you have any comments or suggestions related to the proposed changes described above, you may contact the Sales and Use Tax Department on or before April 29, 2009. Comments or suggestions regarding this material should be directed to the Compliance Manual Coordinator at CPPM.RevisionSuggestions@boe.ca.gov, or you may submit your comments or suggestions to:

Mr. Dave Rosenthal
Sales and Use Tax Department (MIC 50)
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0050
E-mail: dave.rosenthal@boe.ca.gov

LOCAL TAXING JURISDICTION REVIEW OF BOARD OF EQUALIZATION RECORDS _____ 901.000

BACKGROUND 901.010

Revenue and Taxation Code (~~RTC~~)~~Section~~ section 7056—(b) allows local taxing jurisdiction(s) (LTJ) and special taxing jurisdiction(s) (STJ) representative(s) to view confidential taxpayer file information pertaining to their LTJ or STJ under specific circumstances. Primarily, the governing board of the jurisdiction must adopt a resolution authorizing an individual or individuals to view ~~confidential—taxpayer material~~information. The resolution must also contain language restricting the use of the acquired information to governmental purposes.

RESOLUTIONS 901.020

The Local Revenue Allocation ~~Section—Unit~~ (LRASLRAU) is responsible for determining whether a particular jurisdiction has adopted a valid resolution authorizing their employees and/or consultants to view confidential taxpayer ~~records~~information contained in Board of Equalization (BOE) records, pursuant to RTC ~~Section—section~~ 7056. Jurisdiction representatives and consultants may only inspect file information for taxpayers of the jurisdiction they represent. For example, a jurisdiction representative/consultant authorized by a resolution adopted by the City of Sacramento shall only be given access to file information on taxpayers with retail sales locations in, or local tax allocated to, the City of Sacramento. In addition, a representative/consultant may review the file of a taxpayer reporting tax to the jurisdiction's countywide pool and/or statewide pool. Representatives/consultants of STJs with boundaries ~~coterminous in common~~ with county boundaries, may obtain the countywide pool data for the county in which the STJ is located. Representatives/consultants for the Bay Area Rapid Transit District may obtain the countywide pool data for Alameda County, Contra Costa County, and the City and County of San Francisco. Representatives/consultants of STJs are not authorized to view statewide pool data.

The Audit Determination and Refunds Section (ADRS) and district offices should verify with ~~LRAS—LRAU~~ that representatives/consultants are authorized by a valid resolution prior to allowing them access to confidential file information. This verification may be done by telephone. If ~~LRAS—LRAU~~ does not have a copy of a valid resolution on file, the representative/consultant must provide a *certified* copy of the document prior to being allowed access to confidential file information, subject to confirmation by the ~~LRASLRAU~~. ~~The Refunds~~ SectionADRS and district offices should fax the certified resolution to ~~LRAS—LRAU~~ for verification that the resolution meets all the administrative criteria required to authorize the representative/consultant. If the resolution does *not* meet the criteria, the representative/consultant should be advised that pending receipt of an acceptable resolution, access to confidential file material must be denied.

Questions regarding the validity of resolutions, or other resolution-related issues should be directed to ~~LRAS~~LRAU.

REQUEST TO REVIEW TAXPAYER RECORDS

901.030

Requests for review of taxpayer records by jurisdiction representatives or their consultants should be forwarded to the ~~Refunds Section~~ [ADRS](#) for processing. ~~The Refunds Section~~ [ADRS](#) will verify that a valid resolution is on file and will order the requested files from the Taxpayer Records Unit for review. ~~The Refunds Section~~ [ADRS](#) will then review each file to locate and remove any non-disclosable ~~material~~ [information](#) prior to presenting the file to the requester for review.

The representative/consultant will be required to complete a Form BOE-755, *Authorized Examination of Board Records*, for each file reviewed. The completed [Form](#) BOE-755 should detail the specific documents reviewed, including the time period of returns or other documents. Each completed [Form](#) BOE-755 will then be filed in the file of the account reviewed.

~~The Refunds Section~~ [ADRS](#) shall provide space for the examination of files by the representative/consultant in an observable area. Upon request, ~~the Refunds Section~~ [ADRS](#) will also make copies of file material at no charge to the representative/consultant.

REQUEST FOR TAXPAYER INFORMATION AT DISTRICT OFFICE

901.040

Requests for information at the district office level by jurisdiction's representatives or consultants should be forwarded to either the District Principal Auditor (DPA) or the Principal Compliance Supervisor (DPCS). The DPA or DPCS will verify with ~~LRAS~~ [LRAU](#) that a valid resolution is on file. See 901.020 for guidance in situations where a jurisdiction is not listed in "Jurisdictions Having Resolutions." Audit or compliance staff who are contacted directly by a representative/consultant must inform and consult with the DPA or DPCS before acting on the request.

If the request concerns the examination of a district file, if such a file exists, a review of the district file must be made to locate and remove non-disclosable material prior to presenting the file to the requester for review. The representative/consultant shall only be given access to those district files of taxpayers with retail sales locations in or local tax allocated to the jurisdiction for which a valid resolution was passed. Care must be taken to ensure that the representative/consultant is given access only to district file information that pertain to the authorizing jurisdiction and not to any other jurisdiction.

The representative/consultant shall be required to complete a [Form](#) BOE-755 for each file reviewed. The completed ~~form~~ [BOE-755](#) should detail what specific documents were reviewed, including the time period of returns or dates of other documents.

The district office will provide space for the examination of files by the representative/-consultant in an observable area. Upon request, the district office will also make copies of file material at no charge to the representative/consultant.

The original [Form](#) BOE-755, completed at the district level, should be sent to the taxpayer's file in headquarters. A copy of the ~~BOE-755~~ [form](#) may be filed in the taxpayer's district audit or regular file.

NON-DISCLOSABLE INFORMATION

901.050

“Non-Disclosable information” includes:

1. ~~•~~ Memoranda to or from the Legal ~~Division~~ Department marked “Confidential: Attorney — Client Privilege.” (Due to changes in ~~Board~~ BOE policy in this area, not all documents are appropriately marked. If you question whether a document has been appropriately marked as confidential, or believe that a document should be so marked, contact the author of the document or the Legal ~~Division~~ Department for guidance.)
2. ~~•~~ Memoranda directly related to litigation in which the Board is a party, including refund and collection actions.
3. ~~•~~ Memoranda to or from the Attorney General’s office when the Attorney General is acting as the Board’s attorney.
4. ~~•~~ Documents which relate to an *ongoing* criminal investigation.
5. ~~•~~ Federal or state income tax returns.
- ~~4.6.~~ ~~•~~ Any information in the taxpayer’s file that does not pertain to that taxpayer.

Internal memoranda, other than those specified above, are normally not to be regarded as confidential unless so marked. (Due to changes in ~~Board~~ BOE policy in this area, not all documents are appropriately marked. If you question whether a document has been appropriately marked as confidential, or believe that a document should be so marked, contact the author of the document, the ~~Board’s~~ BOE’s Disclosure Officer ~~in ISAD~~, or the Legal ~~Division~~ Department for guidance.)

INSPECTION OF TAXPAYER INFORMATION ON-SCREEN (IRIS\ACMS)

901.060

Some representatives/consultants have found it useful to view information concerning specific payments on-screen. If such a request is made, only ~~Board~~ BOE employees should access the information and print out the information for the consultant. Under no circumstances should a representative/consultant be given access to the BOE computer terminals. The representative/consultant will be required to complete a Form BOE-755 for each account accessed from the BOE’s computerized system by ~~thea~~ the ~~Board~~ BOE employee.

PROCESS FOR REVIEWING LOCAL TAX REALLOCATION-~~PETITIONS~~~~INQUIRIES~~ 905.000

DEFINITIONS 905.010

~~INQUIRING JURISDICTIONS AND THEIR CONSULTANTS (IJC) 905.011~~

Jurisdiction

~~“Jurisdiction” means any city, city and county, or redevelopment agency which has adopted a local tax. Means any city, county, city and county, or transactions and use tax district of this state which has adopted a sales or transactions and use tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of the sales or transactions and use tax ordinance of the city, county, city and county, or transactions and use tax district of this state. Except for submittals under Revenue and Taxation Code section 6066.3, IJC also includes any consultant that has entered into an agreement with the city, county, city and county, or transactions and use tax district, and has al~~
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f a jurisdiction contracts with a consultant to handle local tax matters, the jurisdiction must have a
current resolution filed with the ~~Board~~ BOE which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the ~~Board~~ BOE (CPPM 901.020).

~~CLAIM (INQUIRY) OF INCORRECT OR NON-DISTRIBUTION OF LOCAL TAX 905.012~~

Petition

Except for submittals under ~~Revenue and Taxation Code~~ RTC section 6066.3, ~~"claim or inquiry petition"~~ "claim or inquiry petition" means a written request or inquiry from ~~an IJC~~ a jurisdiction for investigation of suspected ~~improper distribution~~ misallocation of local tax or district tax submitted to the Allocation Group. (See CPPM 905.090 for RTC section 6066.3 inquiries.) The ~~inquiry petition~~ inquiry petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data ~~must~~ should include, ~~at a minimum all of the following~~ for each business location being questioned:

1. Taxpayer name, including owner name and fictitious business name or dba. (doing business as) designation.
2. Taxpayer's permit number or a notation stating "No permit number."
3. Complete business address of the taxpayer.
4. Complete description of taxpayer's business activity ~~or activities~~ (ies).
5. Specific reasons and evidence why the taxpayer's allocation is questioned. (In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location or is a place of business, as defined by Regulation 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes, must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of- state retailer and that title to the goods passed in ~~this state~~ California.)
6. Name, title, and phone number of the contact person.
7. The tax reporting periods involved.

DEFINITIONS

(Cont.) 905.010

"Petition" also includes an appeal by a jurisdiction based on a notification from the Local Revenue Allocation Unit (LRAU) that local taxes or district taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group supervisor within 30 days of the date of mailing of the notification. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, the notification by the LRAU is considered final to the notified jurisdiction and proposed reallocation of local tax or redistribution of district tax will proceed with the next allocation period.

Petitioner

"Petitioner" means a jurisdiction that has filed a valid petition.

Date of Knowledge ~~905.013~~

"Date of Knowledge" is the date the Allocation Group receives a valid petition. An earlier date can be established if it is documented by the BOE. ~~Shall be the date the inquiry of suspected improper distribution of local tax that contains the facts stated above is received by the Board, unless an earlier such date is operationally documented by the Board. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date the Allocation Group received the petition. If the IJC is not able to obtain the above minimum factual data, but provides a letter with the inquiry documenting IJC efforts to obtain each of the facts required above, the Board will use the date this inquiry is received as the date of knowledge.~~

BOARD MANAGEMENT

~~905.014~~

~~Consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.~~

Substantially Affected Jurisdiction

"Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

LRAU is responsible for maintaining a threshold notification list with the computed threshold notification amount and pool percentages for each jurisdiction. This list is reviewed and updated by LRAU once every calendar year. For questions regarding this threshold list, contact the LRAU.

Notified Jurisdiction

"Notified jurisdiction" means a jurisdiction that has been notified as a substantially affected jurisdiction.

SUBMITTING ~~INQUIRIES~~ PETITIONS 905.020

To expedite processing, requests should be submitted by the ~~inquiring~~ petitioning jurisdiction ~~or consultant (IJC)~~ on Form BOE-549-L, Claimed Incorrect Distribution of Local Tax - Long Form, or Form BOE-549-S, Claimed Incorrect Distribution of Local Tax - Short Form. ~~The Form~~ BOE 549-L is used for complex local tax reallocation issues such as sales tax vs. use tax, place of sale, or other complex issues where more information is needed. ~~The Form~~ BOE 549-S is used for simple tax reallocation questions having to do with taxpayers' business addresses or other less complex matters. These forms are available on the BOE website. All ~~inquiries~~ petitions are to be sent directly to headquarters, rather than to a district office. ~~Inquiries~~ Petitions should be mailed to:

Allocation Group
Board of Equalization
450 N Street, MIC 39
P.O. Box 942879
Sacramento, CA 94279-0039

(For inquiries under ~~Revenue and Taxation Code~~ section 6066.3, see CPPM 905.090.)

ACKNOWLEDGMENT OF ~~INQUIRY~~ PETITION/DATE OF KNOWLEDGE 905.030

It is the Allocation Group's ~~Policy~~ policy to acknowledge ~~inquiries~~ petitions within 30 calendar days of receipt by the ~~Board~~ BOE. ~~Inquiries~~ Petitions will be logged in by permit number (if any), jurisdiction (if known), and consultant firm, as applicable ~~(if any)~~.

If the ~~inquiry~~ petition contains sufficient factual data to support the probability that local tax has been erroneously allocated and distributed (~~as stated above under the definition for Claim/ Inquiry of Incorrect or Non-Distribution of Local Tax, see~~ CPPM 905.010), the date of knowledge will be the date the ~~inquiry~~ petition was received by the ~~Board~~ BOE unless there is an earlier date operationally documented by the ~~Board~~ BOE.

An ~~inquiry~~ petition is "operationally documented" by the ~~Board~~ BOE when a ~~Board~~ BOE employee questions the allocation based on information contained in ~~Board~~ BOE files (~~see CPPM 905.070~~). In such cases, the date of knowledge will be the date the employee questions the allocation, not the date of the information contained in ~~Board~~ BOE files. Since there should be written evidence establishing the date on which the ~~Board~~ BOE obtained knowledge of an improper distribution, this date of knowledge should be properly documented and any applicable forms, such as Form BOE-523, *Tax Return and/or Account Adjustment Notice*, (see CPPM 335.000) should be completed.

As noted in CPPM 905.090 ~~below~~, an ~~inquiry~~ a petition received from ~~an IJC~~ a jurisdiction that is a duplicate of one submitted by the same city or jurisdiction to a district office pursuant to ~~Revenue and Taxation Code Section~~ section 6066.3 will not be processed. In such case, the date of knowledge established under section 6066.3 will control.

~~If the inquiry does not contain sufficient facts, and if the IJC has made a good faith effort to obtain sufficient facts but has been unable to do so, the IJC should include a letter with the inquiry, indicating what it has done to obtain those facts. If such a letter is provided and accepted, the Board will use the date the inquiry was received as the date of knowledge.~~

NOTIFICATION OF RESULTS

905.040

After ~~an inquiry~~a petition has been reviewed, the ~~IJC~~petitioner will be notified of the results.

APPROVED REALLOCATIONS

905.041

If staff's investigation confirms a misallocation and the recommended reallocation is less than five thousand dollars, ~~a fund transfer will be processed~~the auditor may approve the reallocation.

All recommended reallocations over five thousand dollars (\$5,000) must be approved by the auditor's supervisor. Reallocations based on inquiries over twenty-five thousand dollars (\$25,000) must be approved by the Audit Determination and Refunds Section Supervisor. Reallocations based on inquiries over fifty thousand dollars (\$50,000) must be approved by the Chief, Headquarters Operations Manager~~Division~~. Once the reallocation is approved~~at the appropriate level~~, the fund transfer will be processed. A monthly recap of all approved reallocations will be maintained.

If a jurisdiction is substantially affected by the reallocation (see CPPM 905.010), the Allocation Group will mail that jurisdiction a copy of its recommendation to reallocate. As explained in CPPM 905.050, the notified jurisdiction may submit a written objection to the Allocation Group.

DENIED REALLOCATIONS

905.042

~~If the auditor recommends that the reallocation request be denied, his or her supervisor will review the recommendation. If the supervisor upholds the denial, the IJC petitioner can request subsequent review by the Refund Section Supervisor, the Local Tax Appeals Auditor, Appeals Division and subsequently by a Board Management team, as described below. The IJC can also file a petition for hearing by the Board after the staff's process is complete, as described below.~~

REVIEW PROCESS 905.050

AUDITOR'S INVESTIGATION REVIEW BY THE ALLOCATION GROUP 905.051050

Investigation and initial decision

~~Inquiries~~Petitions accepted for investigation will be coded for type of misallocation and assigned to an auditor. Assignments may coincide with investigations handled by the Local Revenue Allocation Section~~Unit~~ (LRAU). (Note: with assignments that may coincide with investigations handled by the LRAU, the LRAU Supervisor may be consulted.) The auditor will attempt to resolve all inquiries through communication with the taxpayers including contacting the "contact person" identified in the ~~IJC inquiry~~petition or other such taxpayer personnel. If for some reason a satisfactory response cannot be obtained, the ~~inquiry~~petition may be referred to the appropriate district office for action. Whenever any action is taken, such as writing to the taxpayer for information or, if necessary, referring the ~~inquiry~~petition to the district office, this action will be noted in the log with the appropriate follow-up date (45 days for taxpayers, 60 days for in-state district offices, and 90 days for out-of-state district offices). A copy of any correspondence will be sent to the IJC petitioner. ~~The follow-ups for each week will be distributed each Monday morning to the auditor for appropriate action.~~

~~Note that if at any level of review prior to the Board hearing, it is determined that additional staff investigation is warranted prior to making a decision, a request for such investigation should be directed to the appropriate district office or Board auditor and the IJC will be notified of the results.~~

REVIEW PROCESS 905.050

AUDITOR'S INVESTIGATION REVIEW BY THE ALLOCATION GROUP (Cont.) 905.051050

After a petition has been investigated, the Allocation Group will send a written decision to grant or deny the petition, including the basis for that decision. The decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. The Allocation Group's decision will be sent to the petitioner and, if applicable, any substantially affected jurisdiction.

If a petition is denied, in whole or in part, the petitioner may submit a written objection within 30 days from the mailing of the Allocation Group's decision. Similarly, if a petition is granted, a substantially affected jurisdiction may submit a written objection within 30 days. (See below for explanation of extension periods.) The objecting party must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position.

If no timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

Delayed investigation – petitioner's recourse

If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

Second review by the Allocation Group

If the petitioner or notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection within 30 days of the date of the supplemental decision (or within a period of extension as explained below). If the petitioner or any notified jurisdiction timely appeals the supplemental decision of the Allocation Group, the Allocation Group will prepare the file and forward it to the Appeals Division.

If no timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

Extensions of time

The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection to either a decision or supplemental decision issued by the Allocation Group. The request must:

1. Provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days.
2. Be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision, and
3. Be received by the Allocation Group within 30 days of the date of the decision or supplemental decision.

Within five business days of receipt of the request, the Allocation Group will mail notification to the petitioner and all notified jurisdictions whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection is extended to the 60th day after the date of the mailing of the Allocation Group's decision or supplemental decision. If the request for extension is denied, the time for the petitioner and any notified jurisdiction to file an objection to the Allocation Group's decision or supplemental decision is extended to 10 days after the mailing of the notice denying the extension.

REVIEW BY THE ALLOCATION GROUP SUPERVISOR

905.052

~~The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that a misallocation has not occurred and recommends that a request for reallocation be denied, the IJC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. (Note: with assignments that may coincide with investigations handled by the Local Revenue Allocation Section, the Supervisor of the Local Revenue Allocation Section may be consulted. The Allocation Group's notification that a misallocation has not occurred must state the specific facts on which the conclusion is based. If the IJC contacts the Allocation Group Supervisor, the IJC must state the specific facts on which its disagreement is based, and submit all additional information in its possession at the time that supports its position.~~

REVIEW BY THE REFUND SECTION SUPERVISOR

905.053

~~If the Allocation Group Supervisor upholds the denial, the IJC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for reallocation" with the Refund Section Supervisor. The petition for reallocation must state the specific reasons for disagreement with the Allocation Group Supervisor's findings. The Refund Section Supervisor will review the request for reallocation and will determine if any additional staff investigation is warranted prior to making a decision. If no basis for adjustment is found, the complete record containing all documentation in the file related to the specific appeal will be forwarded to the Local Tax Appeals Auditor and the IJC will be mailed copies of documentation related to the specific appeal that were not previously provided, consistent with confidentiality requirements (see CPPM 901.050 Non-Disclosable Information.)~~

~~REVIEW BY THE LOCAL TAX APPEALS AUDITOR~~

905.054

~~After the petition is forwarded to the Local Tax Appeals Auditor, a conference between the Local Tax Appeals Auditor and the IJC will be scheduled. The IJC may, however, at its option, provide a written brief in addition to, or instead of, attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IJC and the Sales and Use Tax Department (SUTD). Unless the Local Tax Appeals Auditor determines that there is the need for additional investigation he or she will base his or her decisions on the IJC's brief, Board staff input, and the information contained in the record. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached. The D&R will be sent to the IJC and the SUTD.~~

REVIEW BY APPEALS DIVISION

905.060

The Appeals Division will notify the petitioner, all notified jurisdictions, and the Sales and Use Tax Department (SUTD) when the appeals conference is scheduled.

Continued discussion with SUTD; SUTD's Supplemental Decision

The petitioner or any notified jurisdiction may continue to discuss the ~~dispute~~ petition with SUTD staff after the petition is referred to the Appeals Division. If, as a result of such discussions ~~or otherwise~~, the SUTD decides the supplemental decision of the Allocation Group was incorrect or that further investigation ~~should be pursued~~ is warranted, ~~it~~ the Allocation Group will notify the Appeals Division, the petitioner, and all notified jurisdictions of this decision.

If the SUTD sends notice to the Appeals Division no later than 30 days prior to the appeals conference, the Appeals Division will suspend its review, ~~and the petition will be returned~~ the petition to the SUTD. ~~The~~ SUTD will thereafter issue a second supplemental decision, or will return the petition to the Appeals Division, along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

If the SUTD sends notice to the Appeals Division less than 30 days prior to the appeals conference, the Appeals Division will decide whether the petition should be returned to the SUTD or remain with the Appeals Division, and notify the parties accordingly. If the petition is returned to the SUTD, the SUTD will thereafter issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

Where the SUTD issues a second supplemental decision, ~~it~~ SUTD will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection within 30 days of the date of mailing of that supplemental decision, or within a period of authorized extension. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

Appeals conference

The appeals conference is not an adversarial proceeding, but rather ~~is an~~ informal discussion where the petitioner, any notified jurisdictions ~~who wish to participate~~, and the SUTD have the opportunity to explain and discuss their respective positions regarding the relevant facts and law ~~to the Appeals Division conference holder~~. See Regulation 1807(c)(3) for procedures.

Within 90 days after the final submission of information authorized by the ~~conference holder~~ Appeals Division, the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts, ~~and~~ law, and ~~the~~ conclusions of the Appeals Division. The BOE Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the SUTD. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the SUTD.

The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing within 60 days of the date of mailing of the D&R.

Request for Reconsideration

The petitioner, any notified jurisdiction, or the SUTD may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the SUTD submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or ~~arguments~~ documents from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the SUTD. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing within 60 days of the date of mailing of the SD&R.

Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the SUTD as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

If no RFR or request for Board hearing is submitted within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R (as applicable) is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R.

~~REVIEW BY BOARD MANAGEMENT~~

~~905.055~~

~~If the D&R's recommendation is to deny the petition, the IJC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board management. The request must state the specific reasons for disagreement with the D&R and include any additional information that supports its position. Board management will only consider the petition and will not meet with the IJC. The IJC will be notified in writing of the Board management's decision. If a written request for review of the D&R is not filed with Board management within the 30-day period, the D&R becomes final at the expiration of that period.~~

~~REVIEW BY BOARD MEMBERS~~

~~905.056~~

~~If Board management's decision is adverse to the IJC, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reasons for disagreement with Board management's findings.~~

~~PETITION FOR HEARING 905.057~~

~~The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board management's decision. If a petition for hearing is not filed within the 90-day period, the Board management's decision becomes final at the expiration of that period.~~

~~PERSONS TO BE NOTIFIED OF THE BOARD HEARING 905.058~~

~~After receiving the IJC's petition for hearing, the Board Proceedings Division will notify the IJC and the following persons of the Board hearing:~~

- ~~1. The taxpayer(s) whose allocations are the subject of the petition.~~
- ~~2. All jurisdictions that would be substantially affected if the Board does not uphold the taxpayer's original allocation (including the jurisdictions within the statewide and countywide pools that would gain or lose money solely as a result of a reallocation to or from the pools in which they participate). A jurisdiction is "substantially affected" if its total reallocation would increase or decrease by the amount of 5% of its average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, as a result of a reallocation of the taxpayer's original allocation.~~

~~The notification letter will state that the claimed misallocation is being placed on the Board's Hearing Calendar to determine the proper allocation and that the IJC and all jurisdictions so notified are considered parties to the hearing.~~

REVIEW BY BOARD MEMBERS THE HEARING AND PARTIES TO THE HEARING 905.059070

The petitioner or any notified jurisdiction may submit a written request for Board hearing to the Board Proceedings Division within 60 days of the date of mailing of the D&R or SD&R. If the Board Proceedings Division receives a timely request for hearing, it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

REVIEW BY BOARD MEMBERS ~~THE HEARING AND PARTIES TO THE HEARING~~ (Cont.) 905.059070

The ~~petitioning IJC~~petitioner and all jurisdictions notified of the Board hearing are parties to the Board hearing. The taxpayer, however, shall not be considered a "party" within the meaning set forth above unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing.

The hearing shall be conducted in accordance with ~~Regulations 5070 to 5087 of the Rules of Practice~~Chapter 5 of the Board of Equalization Rules for Tax Appeals (Regulations 5510 - 5576). Briefs may be submitted for the hearing in accordance with the Board's Rules for Tax Appeals sections 5270 and 5271. ~~The Board will make a final decision at the hearing on the proper allocation.~~The Board's final decision on the petition exhausts all parties' administrative remedies on the matter.

~~The Headquarters Local Revenue Allocation Section (LRAS) is responsible for maintaining a threshold notification list with the computed threshold notification amount and pool percentages for each jurisdiction. This list is reviewed and updated by LRAS once every calendar year. For questions regarding this threshold list contact the LRAS.~~

~~TIME LIMITATIONS~~ 905.060

~~An IJC will be limited to one 30-day extension of the time limit established for each level of review through the Board management level.~~

~~If action is not taken beyond acknowledgment on any inquiry for a period of six months at any level of review, the IJC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.~~

~~By following the time limits set forth above, any date of knowledge established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new date of knowledge as of the date of receipt of the new information.~~

~~APPEAL RIGHTS OF JURISDICTIONS THAT WILL LOSE REVENUE AS THE RESULT OF A REALLOCATION~~ 905.070

~~If at any time during the process prior to the Board hearing, the Board's investigation determines that a misallocation has occurred, any jurisdiction that will lose 5% of its average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing of the notice, to contact the Allocation Group to discuss the proposed reallocation. The losing jurisdiction may follow the same appeals procedure as described in CPPM 905.050 and CPPM 905.060. "Losing jurisdiction" includes a gaining jurisdiction where the original decision in favor of the gaining jurisdiction was overturned in favor of a previously losing jurisdiction. The reallocation will be postponed until the period for the losing jurisdiction to request a hearing with the Allocation Group has expired. If the losing jurisdiction contacts the Allocation Group prior to the Board hearing, and subsequently petitions the proposed reallocation, the reallocation postponement will be extended pending the outcome of the petition.~~

~~There are times when Board staff becomes aware of a misallocation through independent means, such as an audit of a taxpayer, review of a return, a letter from a taxpayer or his or her representative or in some other manner. In these situations jurisdictions losing 5% of its~~

~~average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the proposed reallocation, and if a delay is requested, allowed 30 days to request a meeting with the Allocation Group Supervisor. These jurisdictions may follow the appeals procedure described in CPPM 905.050.~~

LIMITATION PERIOD FOR REDISTRIBUTIONS

905.080

Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the ~~Board~~ BOE obtains knowledge of the improper distribution.

APPLICATION TO SECTION 6066.3 INQUIRIES

905.090

The procedures set forth above for submitting information to the ~~Board~~ BOE concerning improper distributions ([see CPPM 905.010](#)) are in addition to, but separate ~~and apart~~ from, any procedures established under the authority of ~~Revenue and Taxation Code~~ RTC section 6066.3 ~~for making inquiries regarding improper distributions.~~

RTC section 6066.3 authorizes each city, county, and city and county to collect and transmit to the Board information from persons desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property. The information submitted serves as (1) a preliminary application for seller's permit, (2) notification to the Board by the local jurisdiction of a person desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property, and (3) notice to the Board for purposes of redistribution.

If ~~inquiries-a petition~~ regarding suspected improper distribution of local tax ~~are-is~~ received both under the procedures set forth above and RTC section 6066.3, ~~duplicate inquiries will not be processed~~ only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to the earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) of Regulation 1807 also apply to appeals from reallocation determinations made under RTC section 6066.3.

~~A subsequent inquiry will not be considered a "duplicate inquiry" when that subsequent inquiry does not contain the same reasons for error as in another inquiry for the same taxpayer by the same city. The date of the earliest inquiry shall be controlling as to whether the request is to be handled under the provisions set forth above or section 6066.3, and the date of knowledge shall be established under the controlling procedure.~~

~~The terms and procedures starting with the review by the Refund Section Supervisor up to and including the review and final decision by the Board Members shall also apply to appeals from reallocation determinations made under Revenue and Taxation Code section 6066.3.~~

~~The provisions set forth above shall apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to existing inquiries and appeals procedures contained in the "Process for Reviewing Reallocation Inquiries" (June 1996, amended October 1998). However, for inquiries filed prior to January 1, 2003, the IJC may elect in writing to proceed under the provisions set forth above as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions set forth above. If written election to proceed under the provisions set forth above is made, the provisions set forth above become applicable the date the election is received by the Board. Neither election shall be subject to revocation.~~

~~KNOWLEDGE OF INCORRECT LOCAL TAX ALLOCATIONS OTHER THAN FROM INQUIRIES BY LOCAL JURISDICTIONS AND CONSULTANTS DISCOVERED BY BOARD~~BOE STAFF

906.000

The ~~Board of Equalization~~BOE will be considered to have knowledge of an improper distribution when an employee of the ~~Board~~BOE has such knowledge. To establish a date of knowledge (DOK), there must be sufficient factual data to indicate the probability that local tax has been erroneously allocated (see CPPM 905.010 and Regulation 1807 (a)(~~23~~)).

A DOK of improper distribution can be established using either of the following two methods:

1. ~~The Board~~BOE receives ~~an inquiry~~a petition from a local jurisdiction or its representative (see CPPM 905.000).
2. ~~An~~BOE employee, ~~of the Board~~in the course of his or her duties (e.g., field audit or investigation or review of a return), discovers ~~factual~~information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and that allocation is questioned by the ~~Board~~BOE employee. A DOK is established as of the date the employee questions the allocation (see CPPM 906.020). This date shall be considered "operationally documented by the ~~Board~~BOE" ~~--~~ (see RTC 1807(a)(~~35~~) and CPPM 905.030).

There should be written evidence establishing the date on which the ~~Board~~BOE obtained knowledge of an improper distribution. Therefore, this date of knowledge shall be properly documented on the appropriate letter, memo, or applicable forms.

FACTS IN THE RECORDS OF THE BOARD

906.010

Facts already in the records of the ~~Board~~BOE do not in and of themselves constitute knowledge of an erroneous local tax allocation. Such knowledge arises when the taxpayer, an employee of the ~~Board~~BOE, ~~an Inquiring Jurisdiction and Their Consultant (IJC)~~a jurisdiction, or some other person questions the correctness of the local tax allocation.

To constitute knowledge by the ~~Board~~BOE, it is not necessary that the employee of the ~~Board~~BOE obtaining the knowledge be absolutely certain that the local tax allocation was erroneous. For example, the employee may refer the information upon which the decision is based to the supervisor or to headquarters for final decision or the employee may secure additional information from the taxpayer. It is not necessary to know the specific amount of tax or tax measure involved at the time knowledge of an improper distribution is first obtained. This may be determined later.

FACTS DISCOVERED DURING A FIELD AUDIT OR INVESTIGATION

906.020

There should be written evidence establishing the date on which the ~~Board~~BOE obtained knowledge of an improper distribution.

If during the course of a field audit or field investigation a ~~Board~~BOE employee becomes aware that there is a probability of an erroneous local tax allocation, the DOK will be the first day the ~~Board~~BOE employee became aware of such probability that the local tax was erroneously allocated. It is not necessary to complete the investigation or the audit to establish a DOK.

FACTS DISCOVERED DURING A FIELD AUDIT OR INVESTIGATION (Cont.) 906.020

~~The Board employee should write a memorandum describing the type of error that occurred and the type of transaction involved and complete appropriate forms as needed.~~ The type of transaction and associated error should be documented in the audit work papers or field investigation report. Specific amounts of tax or measure need not be included. ~~The Board employee shall date and sign the memorandum. The memorandum shall become part of the audit working papers or field investigation report.~~ On the local tax reallocation schedule submitted with the report of field audit there should be stated the date on which the Board obtained knowledge of the erroneous allocation. (See Audit Manual 0209.27.)

FACTS DISCOVERED DURING REVIEW OF A RETURN 906.030

If during the course of a review of a Sales and Use Tax Return the ~~Board~~ BOE becomes aware that there is a probability of an erroneous local tax allocation, the DOK will be the first day the employee became aware of such probability that the local tax was erroneously allocated. This DOK will only apply to the particular questioned jurisdictions on the return even though it may later be found that there are additional erroneous allocations on the same return. Different dates of knowledge shall be established if the employee becomes aware of additional misallocations.

LIMITATION PERIOD 906.040

Section 7209 of the Bradley-Burns Uniform Local Sales and Use Tax Law provides as follows:

"The ~~Board~~ board may redistribute tax, penalty and interest distributed to a county or city other than the county or city entitled thereto, but such redistribution shall not be made as to amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the ~~Board~~ board obtains knowledge of the improper distribution."

When the ~~Board~~ BOE verifies improper distributions reported on returns, redistributions may be processed for amounts originally distributed no more than two quarterly periods preceding the quarterly period in which the ~~Board~~ BOE obtains a DOK. Since local tax is generally distributed during the quarter following the period for which tax is reported, redistributions are usually processed for the three quarters immediately preceding the calendar quarter in which the DOK is acquired. For example, City A notifies the ~~Board~~ BOE in a letter received on March 15, ~~1999~~ 2008, that Taxpayer X opened a business in that city in February ~~1998~~ 2007, but no tax has been allocated to that city from that taxpayer. The ~~Board~~ BOE investigates the city's inquiry, finds that the city is correct, and that this taxpayer's local tax has been improperly allocated to City B. The investigation is completed on April 2, ~~1999~~ 2008. Although the verification is not made until the second quarterly period, the DOK (March 15) is in the first quarterly period. Accordingly, the ~~Board~~ BOE will redistribute (reallocate) the local tax from City B to City A for the second, third, and fourth quarters ~~1998~~ 2007, when all prior periods funded timely.

LIMITATION PERIOD

(Cont.) 906.040

The ~~Board~~ BOE cannot distribute local tax until payment is received from the taxpayer. A taxpayer may file a return and properly submit all required local tax allocation schedules, but if the taxpayer does not remit any funds, (called a "no remittance" return) there is no revenue to distribute. However, when these funds are remitted, they will be distributed in accordance with the taxpayer's return. Sometimes after distribution, it is discovered that the tax was not allocated in the appropriate manner. When questions arise involving the manner in which the tax was allocated, it is the period in which the tax was distributed rather than the period for which the tax was reported that is relevant. ~~Revenue and Taxation Code~~ section 7209 provides that redistribution of the local tax can be made for two quarterly periods prior to the quarterly period in which the ~~Board~~ BOE obtains knowledge of the improper distribution. This means that any local tax distributed during the previous two quarters may be considered for redistribution. The date of distribution can be found under IRIS on the FND VA screen.

The following schedule shows the cash receipt dates of the distributions made during a typical four-quarter period. The term "Cash Receipt Date" means the date on which the ~~Board~~ BOE receives a taxpayer remittance. The term "Distribution" means the payment of revenue to local jurisdictions and special tax districts. Since the cut-off date for each quarterly distribution is established as the ninth working day following the due date for quarterly returns, the actual cut-off date may vary in each year due to intervening week-ends or holidays. Nevertheless, this schedule may be used as a guide in determining the quarter of distribution for payments received with returns on a yearly or irregular basis, delinquent returns, or as a result of a billing:

<u>Cash Receipt Date</u>	<u>Quarter of Distribution</u>
Feb. 13 – May 13	2 nd Quarter
May 14 – Aug 13	3 rd Quarter
Aug. 14 – Nov. 13	4 th Quarter
Nov. 14 – Feb. 12	1 st Quarter

Revenue received with delinquent returns or in payment of a billing based on an incorrect return, field audit, or investigation presents a different problem. As previously stated, distributions made in one quarter cover tax reported on returns for the previous quarter. They also include revenues in payment of delinquent returns, and billings such as Audits and FBO's, etc., which were received at the same time. Therefore, with respect to these latter payments, the limitation on amounts subject to redistribution may extend beyond the usual period.

DISTRICT OFFICE RESPONSIBILITY

906.050

As previously stated, the district office employee who discovers an error in the allocation of local tax should record the date that knowledge of the error was obtained.

If an error in allocation of local tax is discovered, the auditor or field representative should confine his or her report of the necessary redistribution to amounts originally distributed within the limitation period provided by section 7209 of the Bradley-Burns Local Sales and Use Tax [Law](#). Generally, this will consist of tax reported for the three quarters immediately preceding the quarter in which the error was discovered unless the district office file contains evidence of late returns and payments on billings, in which case, the extent of the limitation period should be determined by the schedule in CPPM 906.040. If there is any question regarding the extent of the limitation period, the auditor or field representative should report only tax for the aforementioned three quarterly periods and depend on headquarters' review for notification if additional information is needed. However, every effort should be made to determine all amounts to be redistributed during the original field investigation. ~~Good judgement~~[judgment should be exercised to avoid spending any appreciable time on inconsequential adjustments.](#) For additional instructions regarding Form BOE-414-L Auditor's Work Sheet Local Sales and Use Tax Allocation, ~~see~~ [see](#) Audit Manual 0209.000.

HEADQUARTERS RESPONSIBILITY

906.060

Redistributions in Headquarters will be subject to the same review as redistributions that are received from district offices.

ALLOCATION GROUP

In general, the [LRAU's](#) Allocation Group will make all redistributions of local tax [and district taxes](#) as a result of [petitions from jurisdictions](#)~~Inquiries from Jurisdictions and/or Consultants (JC).~~ The Allocation Group has the responsibility to examine all reports of errors in distribution that are received from district offices (~~Board~~ [BOE](#) audits, reaudits, FBO's, ~~inquiries from JC's~~[petitions from jurisdictions](#), and inquiries filed under [RTC](#) section 6066.3) and verify by an examination of the master file, or any other records in Headquarters, that the report includes all amounts within the limitation period. If this examination discloses that the limitation period extends beyond the point covered by the report, and information regarding the amount to be redistributed cannot be determined from the records in Headquarters, the necessary additional information will be requested from the district office.

LOCAL REVENUE ALLOCATION ~~SECTION~~[UNIT \(LRAU\)](#)

The Local Revenue Allocation ~~Section~~[Unit](#) handles redistributions of local tax [and district taxes](#) discovered during reviews of returns (CPPM 906.030), as well as redistributions resulting from corrections to the Tax Area Codes, exclusive of Board audits, reaudits, FBO's, ~~inquiries~~[petitions](#) from ~~JC's~~[jurisdictions](#) (see CPPM 905.000), and inquiries filed under [RTC](#) section 6066.3 (see CPPM 905.090). [LRAU processes all field audit redistributions of district taxes submitted by field offices.](#)